United Nations A/C.5/66/9

General Assembly

Distr.: General
4 November 2011

Original: English

Sixty-sixth session
Fifth Committee
Agenda item 143
Administration of justice at the United Nations

Letter dated 4 November 2011 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit to you herewith, for consideration and action, as appropriate, by the Fifth Committee, a letter dated 1 November 2011 from the Chair of the Sixth Committee (see annex).

(*Signed*) Nassir Abdulaziz **Al-Nasser**

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Annex

I have the honour to write to you with regard to agenda item 143, entitled "Administration of justice at the United Nations".

As you are aware, at its 2nd plenary meeting, on 16 September 2011, the General Assembly decided to allocate this item to the Fifth Committee and to the Sixth Committee for the purpose of considering the legal aspects of the reports to be submitted in connection with the item.

During the present session, the Sixth Committee has considered this item at its 11th, 17th, 25th and 26th meetings on 10, 21 and 31 October and on 1 November 2011, as well as in the form of a Working Group. The Sixth Committee notably considered the legal aspects of the reports submitted by the Secretary-General and the Internal Justice Council (A/66/275 and Corr.1 and A/66/158, respectively), as well as the amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which had been adopted by the Tribunals subject to the approval of the General Assembly (A/66/86 and Add.1). I should draw your attention to a number of specific issues relating to the legal aspects of the reports of the Secretary-General and the International Justice Council, as discussed in the Sixth Committee.

Delegations emphasized the importance of respecting the legal framework within which the system of administration of justice operates, recalling that recourse to general principles and the Charter is to be had within the context of the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and the relevant General Assembly resolutions and administrative issuances.

Delegations were aware of the fact that the General Assembly had allocated the item to the Sixth Committee without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters. However, they also recalled that, in its resolution 61/261, the General Assembly had decided, inter alia, that the new system of administration of justice should be independent, transparent, professionalized, adequately resourced and decentralized, consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike (para. 4). Delegations were thus of the view that the General Assembly, when considering the various proposals in the reports of the Secretary-General and the Internal Justice Council, should duly take into account paragraph 4 of resolution 61/261. With respect to the conduct of the proceedings before the Tribunals, delegations recalled that the proper conduct of oral hearings, via videoconferencing when appropriate, as well as the recording of oral hearings and the availability of their transcription, were vital elements of due process in that they helped to secure the procedural rights of the parties, including in an appeal. Delegations were of the view that these legal considerations should be kept in mind in the future discussion.

Delegations further advised that the Fifth Committee should be requested to consider the issue of reporting by various elements of the administration of justice system on the various developments in the field of administration of justice in a comprehensive manner.

Concerning the number of judges of the United Nations Dispute Tribunal, delegations expressed concern that the expiration of the terms of office of three

ad litem judges by the end of 2011 would reduce the number of judges by half and that, considering that the number of cases before the Tribunal may be increasing or at least remaining relatively constant, this may result in a backlog and significant delays in the handling of cases which in turn may raise serious concerns regarding due process.

Delegations duly considered the proposed amendments to the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. Delegations considered that the proposals concerning appeals to interlocutory orders, contained in the report of the Secretary-General (A/66/275 and Corr.1, paras. 266 and 269), should not be taken up at this time but should be re-examined in the course of a future review of the statutes. In addition, delegations felt that it was premature to envisage any amendment to the statute of the United Nations Dispute Tribunal with regard to the question of the jurisdiction of the Tribunal over acts and omissions by independent entities in connection with the performance of their operational activities (ibid., paras. 280 and 293); rather, more time should be allowed for practice to develop. In view of the goal of creating a transparent system of justice, delegations also considered it unnecessary to amend the statute of the United Nations Dispute Tribunal regarding redaction of names as proposed in the report of the Secretary-General (ibid., para. 263), since provisions concerning the protection of personal data already existed in the rules of procedure. Regarding the proposal of the Internal Justice Council that the statutory requirement for the President of the United Nations Appeals Tribunal to authorize three-judge panel hearings of the United Nations Dispute Tribunal be revised to allow determination of that need by the President of the Dispute Tribunal (A/66/158, recommendation 31), delegations were of the view that the consideration of this issue should be postponed to the next review of the system of administration of justice, when more practical experience would have been acquired. In relation to the Secretary-General's proposal concerning the provision of a mechanism for the dismissal of manifestly inadmissible cases by the United Nations Appeals Tribunal (A/66/275 and Corr.1, para. 255), delegations were not convinced that an amendment to the statute of the United Nations Appeals Tribunal was necessary in order to address the issue, which should be addressed through an amendment of the rules of procedure of the Tribunal. Delegations considered that the Secretary-General's proposal that the deadline for filing appeals be extended from 45 to 60 days (ibid., para. 269) deserved support, and that the same was true concerning the proposal of the Internal Justice Council that an extension of the deadline for management evaluation be allowed by the United Nations Dispute Tribunal in exceptional circumstances, for a reasonably limited period and when both parties to a dispute agree. In addition, some delegations enquired about reports regarding the amounts of compensation awarded by the Tribunals.

In general, delegations supported the view that the General Assembly should encourage the judges of the United Nations Dispute Tribunal and those of the United Nations Appeals Tribunal to continue, and to expand as appropriate, their practice of consultation in any process of drafting amendments to the rules of procedure of the respective Tribunals; hence, the proposal contained in the Secretary-General's report (ibid., para. 250) requiring consultations before amendments to rules of procedure was not considered necessary.

On the question of redress mechanisms for non-staff personnel, delegations recalled that the General Assembly had already decided that effective remedies were

to be accorded to all individuals who work for the United Nations. In this regard, delegations proposed that the Secretary-General be requested to elaborate further his proposal concerning an expedited arbitration procedure (ibid., para. 190 and annex II), and also to include in his future reports information on how this mechanism, if adopted, would apply in practice to the different categories of non-staff personnel that would be covered by it, and how the mechanism would be operationalized. As to categories of non-staff personnel not covered by the arbitration procedure, delegations proposed that the Secretary-General be requested to provide information on measures that might appropriately be made available to assist such individuals in addressing disputes that might arise. Delegations further recalled that possibilities for categories of non-staff personnel not covered by the arbitration procedure to access the informal system, that is, to take their case to the Ombudsman, would provide a useful means of redress for this group of persons. Some delegations showed interest in all categories of non-staff personnel having access to the informal system. Delegations recalled that the General Assembly had on many occasions emphasized that informal conflict resolution was a crucial element of administration of justice and that all possible use should be made of the informal system to avert unnecessary litigation. With regard to access for non-staff personnel to the management review process, delegations showed interest in further information on possible implementation of such a possibility.

Delegations expressed appreciation for the proposals of the Secretary-General (ibid., paras. 52-60) and the Internal Justice Council (A/66/158, para. 7) concerning the establishment of a mechanism for addressing complaints against judges and discussed other proposals in this regard. Considering that such a mechanism should be developed as a matter of priority in order to complement the code of conduct for judges and to allow for its implementation, delegations were of the opinion that the General Assembly should request further study of this issue and call for more information on how the investigation procedure should be structured, how the different steps indicated in the Secretary-General's report would play out in practice, how the rights of the judge under investigation were to be guaranteed, and how the General Assembly would be kept informed of the proceedings or seized when a removal from office by the Assembly was being contemplated.

Regarding the draft code of conduct, delegations reiterated their request for the Internal Justice Council to further elucidate the principle of "open justice" under the heading "Transparency".

Furthermore, delegations considered that the General Assembly should request, as a matter of priority, the issuance of the terms of reference of the Office of the Ombudsman and Mediation Services.

It would be appreciated if the present letter could be brought to the attention of the Chair of the Fifth Committee, and be circulated as a document of the General Assembly, under agenda item 143.

(*Signed*) Hernán **Salinas Burgos**
Chair of the Sixth Committee at the
sixty-sixth session of the General Assembly